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WESTERN DISTRICT OF WASHINGTON DEPUTY



07-CV-00432-ORD

5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

7 RICHARD SPRUEL,

8 Plaintiff,

9 v.

10 STATE OF WASHINGTON,

11 Defendant.

CASE NO. C07-432-MJP

ORDER OF DISMISSAL

12  
13 The Court, having reviewed the Report and Recommendation of the Honorable James P.  
14 Donohue, United States Magistrate Judge, Plaintiff's objections, declaration, supplemental  
15 appendices, and the balance of the record, does hereby find and ORDER:

16 (1) The Court adopts the Report and Recommendation.

17 (2) Plaintiff cannot maintain a cause of action against the State of Washington under 42  
18 U.S.C. § 1983. See Will v. Mich. Dep't of State Police, 491 U.S. 58, 63 (1989)  
19 (holding that "a State is not a person within the meaning of § 1983"); De Nieva v.  
20 Reyes, 966 F.2d 480, 483 (9th Cir. 1992). Plaintiff argues that he may sue the State of  
21 Washington for injunctive relief. Although the Supreme Court has held that state  
22 officials sued for injunctive relief in their official capacities are "persons" subject to  
23 liability under § 1983, see Will, 491 U.S. at 71 n.10 ("[A] state official in his or her  
24 official capacity, when sued for injunctive relief, would be a person under § 1983  
25 because official-capacity actions for prospective relief are not treated as actions against

26 ORDER OF DISMISSAL

1 the State.”), Plaintiff has not cited and the Court is not aware of any legal authority for  
2 the proposition that a state, when sued for injunctive relief, is a person under § 1983.  
3 See In Re Harleson, 331 F.3d 699, 701 (9th Cir. 2003). “Under the Eleventh  
4 Amendment, a state is immune from suit under state or federal law by private parties  
5 in federal court absent a valid abrogation of that immunity or an express waiver by the  
6 state.” Id. Because the State of Washington has not waived its Eleventh Amendment  
7 immunity, Whiteside v. Washington, 534 F. Supp. 774 (E.D. Wa. 1982), Plaintiff may  
8 not maintain a § 1983 suit for monetary damages or injunctive relief against the state.

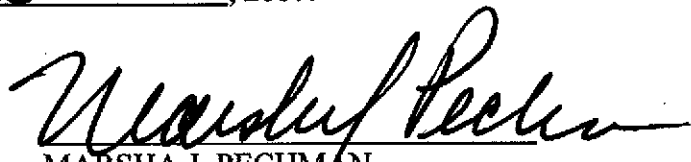
9 (3) Plaintiff has not objected to Magistrate Judge Donohue’s conclusion that his claims  
10 challenging his prior criminal proceedings are barred by Heck v. Humphrey, 512 U.S.  
11 477 (1994).

12 (4) Because he has failed to state a claim on which relief may be granted, Plaintiff’s  
13 complaint (Dkt. No. 5), and this action, are DISMISSED without prejudice pursuant to  
14 28 U.S.C. § 1915(e)(2)(B).

15 (5) In his supplemental filings, Plaintiff states several additional grievances he has with  
16 the King County Jail. Because the Court dismisses his complaint, the Court will not  
17 consider these additional allegations.

18 (6) The Clerk is directed to send copies of this Order to plaintiff and to the Honorable  
19 James P. Donohue.

20 DATED this 10 day of Dec., 2007.

21  
22   
23 MARSHA J. PECKMAN  
24 United States District Judge  
25  
26

ORDER OF DISMISSAL